

**AGREEMENT FOR PROFESSIONAL SERVICES
BETWEEN THE CITY OF SANTEE
AND
[CONSULTANT]**

This Agreement for Professional Services ("Agreement") is made and entered into this [DAY] day of [MONTH], [YEAR], by and between the City of Santee ("City"), a California charter city and [CONSULTANT], a [corporation, partnership, LLC or LLP, individual, etc.]("Consultant").

RECITALS

- A. City is a charter city and is in need of professional services for the following project:
_____ ("the Project").
- B. Consultant is duly licensed and/or has the necessary qualifications to provide such services for the Project.
- C. The parties' desire by this Agreement to establish the terms for the City to retain Consultant to provide the services described herein.

AGREEMENT

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

1. Services

Consultant shall provide the City with the services described in the Scope of Services attached hereto as Exhibit 'A' and hereby made a part of this Agreement; provided, however, that the contents of this Agreement shall supersede any provision in Exhibit 'A' that is inconsistent herewith.

2. Compensation

- a. Subject to paragraphs 2(b) - (d) below, City shall pay for the services provided by Consultant in accordance with the Schedule of Charges set forth in Exhibit 'B' attached hereto and hereby made a part of this Agreement; provided, however that the contents of this Agreement shall supersede any provision in Exhibit 'B' that is inconsistent herewith.
- b. In no event shall the total amount paid for services rendered by Consultant pursuant to this Agreement exceed the sum of \$ _____. This Agreement is subject to and contingent on budgetary appropriations being approved by the City Council for each fiscal year during the term of this Agreement. If such appropriations are not approved, the Agreement will be immediately terminated without penalty to the City.
- c. Each month Consultant shall furnish City with an original invoice for all work performed and expenses incurred during the preceding month. The invoice shall detail charges by categories, including labor, travel, materials, equipment, supplies, sub-consultant charges and miscellaneous expenses. City shall independently review each invoice submitted to determine whether the work performed and expenses incurred are in compliance with the provisions of this Agreement. In the event that no charges or expenses are disputed, the invoice shall be approved and paid according to the terms set forth in paragraph 2(d). In the event any charges or expenses are disputed, the original invoice shall be returned by City to Consultant for correction and resubmission.
- d. Except as to any charges for work performed or expenses incurred by Consultant which are disputed by City, City will use its best efforts to cause Consultant to be paid

within thirty (30) days of receipt of Consultant's invoice; provided however, that untimely invoices may be subject to nonpayment if funding has not been appropriated or budgeted for payment of the invoice due to Consultant's untimely submission. Payment to Consultant for work performed pursuant to this Agreement shall not be deemed to waive any defects in the work performed by Consultant.

3. Additional Work

Consultant shall not be compensated for any services outside of the Scope of Services, except as provided in this paragraph. If changes in the work seem merited by Consultant or the City, and informal consultations with the other party indicate that a change is warranted, a change in scope of the work shall be processed by the City in the following manner: a letter outlining the changes shall be forwarded to the City by Consultant with a statement of estimated changes in fee or time schedule. An amendment to this Agreement shall be prepared by the City and executed by both parties before performance of such services or the City will not be required to pay for the changes in the scope of work. Such amendment shall not render ineffective or invalidate unaffected portions of this Agreement.

4. Maintenance of Records

Books, documents, papers, accounting records, and other evidence pertaining to work done and costs incurred pursuant to this Agreement shall be maintained by Consultant and made available for inspection, audit and copying by the City at all reasonable times during the term of this Agreement and for four (4) years from the date of final payment under the Agreement.

5. Ownership and Use of Work

All documents and materials prepared pursuant to this Agreement shall be considered the property of City, and will be turned over to City upon demand, but in any event upon completion of the work. City reserves the right to publish, disclose, distribute and otherwise use, in whole or in part, any reports, data or other documents and materials prepared under this Agreement without the permission of Consultant. All documents and materials shall be delivered in a reproducible form. As used herein, "documents and materials" include, but are not limited to, any original maps, models, designs, drawings, photographs, studies, surveys, reports, data, notes, and computer files prepared or developed pursuant to this Agreement.

6. Findings Confidential

Any reports, information, data or materials given to or prepared or assembled by Consultant under this Agreement are confidential and shall not be made available to any individual or organization by Consultant without prior written approval of City.

7. Conflict of Interest

Consultant hereby expressly covenants that no interest presently exists, nor shall any interest, direct or indirect, be acquired during the term of this Agreement that would conflict in any manner with the performance of services pursuant to this Agreement.

8. Term of Agreement and Time of Performance

Consultant shall perform its services hereunder in a prompt and timely manner, and in accordance with the Activity Schedule shown in [Exhibit 'C'](#) attached hereto and made a part hereof; provided, however, that the contents of this Agreement shall supersede any provisions in [Exhibit 'C'](#) that is inconsistent herewith. Work shall commence upon receipt of a written Notice to Proceed from the City. The Notice to Proceed shall set forth the date of commencement of the work. Unless a different date is set forth in the Activity Schedule, the term of this Agreement shall be for a period of one (1) year from the date of execution of this Agreement unless terminated sooner pursuant to the provisions of this Agreement or the Work is complete. Such term may be extended upon written agreement of both City and Consultant.

9. Delays in Performance

Neither the City nor Consultant shall be considered in default of this Agreement for delays in performance caused by circumstances beyond the reasonable control of the non-performing party. For purposes of this Agreement, such circumstances include but are not limited to, abnormal weather conditions; floods; earthquakes; fire; epidemics; war; riots and other civil disturbances; strikes, lockouts, work slowdowns, and other labor disturbances; sabotage or judicial restraint.

Should such circumstances occur, the non-performing party shall, within a reasonable time of being prevented from performing, give written notice to the other party describing the circumstances preventing continued performance and the efforts being made to resume performance of this Agreement.

10. Compliance with Law

- a. Consultant shall comply with all applicable laws, ordinances, codes and regulations of the federal, state and local government. If Consultant's failure to comply with applicable laws, ordinances, codes and regulations results in a claim for damage or liability to City, Consultant shall be responsible for indemnifying and holding the City harmless as provided in this Agreement.
- b. Consultant shall assist the City, as requested, in obtaining and maintaining all permits, if any, required of Consultant by Federal, State and local regulatory agencies.

11. Standard of Care

Consultant's services will be performed in accordance with generally accepted professional practices and principles and in a manner consistent with the level of care and skill ordinarily exercised by members of the profession currently practicing under similar conditions.

12. Assignment and Subconsultants

Consultant shall not assign, delegate, sublet, or transfer this Agreement or any rights under or interest in this Agreement without the written consent of the City, which may be withheld for any reason. A consent to one assignment shall not be deemed to be consent to any subsequent assignment. Nothing contained herein shall prevent Consultant from employing independent associates and subconsultants as Consultant may deem appropriate to assist in the performance of services hereunder.

13. Independent Consultant

Consultant is retained as an independent Consultant and is not an agent or employee of the City. No employee or agent of Consultant shall by this Agreement become an agent or employee of the City. The work to be performed shall be in accordance with the work described in [Exhibit 'A'](#), subject to such directions and amendments from the City as herein provided. Consultant shall have no authority, express or implied, pursuant to this Agreement to bind City to any obligation whatsoever.

14. Integration

This Agreement represents the entire understanding of the City and Consultant as to those matters contained herein, and supersedes and cancels any prior oral or written understanding, promises or representations with respect to those matters covered hereunder. To the extent that any provision or clause contained in an attachment to this Agreement conflicts with a provision or clause in the Agreement, the provision or clause in this Agreement shall control. This Agreement may not be modified or altered except in writing signed by both parties hereto. This is an integrated Agreement.

15. Insurance

a. Commercial General Liability

- (i) The Consultant shall take out and maintain, during the performance of all work under this Agreement, in amounts not less than specified herein, Commercial General Liability Insurance, in a form and with insurance companies acceptable to the City.
- (ii) Coverage for Commercial General Liability insurance shall be at least as broad as the following:
 - (1) Insurance Services Office Commercial General Liability coverage (Occurrence Form CG 0001)
- (iii) Commercial General Liability Insurance must include coverage for the following:
 - (1) Bodily Injury (including death) and Property Damage
 - (2) Personal Injury/Advertising Injury
 - (3) Premises/Operations Liability
 - (4) Products/Completed Operations Liability
 - (5) Aggregate Limits that Apply per Project
 - (6) Explosion, Collapse and Underground (UCX) exclusion deleted
 - (7) Contractual Liability with respect to this Contract
 - (8) Broad Form Property Damage
 - (9) Independent Consultants Coverage
 - (10) Sexual Misconduct Coverage, with no applicable sublimit
- (iv) All such policies shall name the City of Santee, its City Council and each member thereof, its officers, employees, and agents as Additional Insureds under the policy.
- (v) The general liability program may utilize either deductibles or provide coverage excess of a self-insured retention, subject to written approval by the City. All deductibles and self-insured retentions must be declared to the City prior to commencing work under this Agreement.

b. Automobile Liability

- (i) At all times during the performance of the work under this Agreement the Consultant shall maintain Automobile Liability Insurance for bodily injury (including death) and property damage including coverage for owned, non-owned and hired vehicles, in a form and with insurance companies acceptable to the City.
- (ii) Coverage for automobile liability insurance shall be at least as broad as Insurance Services Office Form Number CA 0001 (ed. 6/92) covering automobile liability, Code 1 (any auto).
- (iii) The automobile liability program may utilize deductibles, but not a self-insured retention, subject to written approval by the City.

c. Workers' Compensation/Employer's Liability

- (i) At all times during the performance of the work under this Agreement the Consultant shall maintain Workers' Compensation in compliance with applicable statutory requirements and Employer's Liability Coverage in amounts indicated herein.

- (ii) Such insurance shall include an insurer's Waiver of Subrogation in favor of the City and will be in a form and with insurance companies acceptable to the City.
 - (iii) If insurance is maintained, the workers' compensation and employer's liability program may utilize either deductibles or provide coverage excess of a self-insured retention, subject to written approval by the City.
 - (iv) Before beginning work, the Consultant shall furnish to the City satisfactory proof that he/she has taken out for the period covered by the work under this Agreement, full compensation insurance for all persons employed directly by him/her to carry out the work contemplated under this Agreement, all in accordance with the "Workers' Compensation and Insurance Act," Division IV of the Labor Code of the State of California and any acts amendatory thereof. Consultant shall require all subconsultants to obtain and maintain, for the period covered by the work under this Agreement, worker's compensation of the same type and limits as specified in this Section.
- d. Professional Liability (Errors and Omissions)
- (i) At all times during the performance of the work under this Agreement and for 60 months following the date of Project completion and acceptance by the City, the Consultant shall maintain Professional Liability insurance, in a form and with insurance companies acceptance to the City and in an amount indicated herein; provided, however, that if the work under this Agreement involves teaching, coaching, or childcare, Consultant shall provide Educators Legal Liability ("ELL") insurance in lieu of Professional Liability insurance
- e. Pollution/Asbestos Legal Liability
- (i) At all times during the performance of the work under this Agreement and for sixty (60) months following the date of Project completion, the Consultant shall maintain Pollution Legal Liability insurance and/or Asbestos Legal Liability insurance and/or Errors and Omissions (if the Project involves environmental hazards) in an amount indicated herein.
 - (ii) The Consultant, along with all employees, agents and subcontractors who have a reasonable probability of coming into contact with hazardous materials, shall be adequately trained to comply with and shall comply with all laws and regulations relating to the care and protection of the environment in the performance of the work performed by the Consultant or any portion thereof.
- f. Cyber Liability.
- At all times during the performance of the work under this Agreement and for sixty (60) months following the date of Project completion, the Consultant shall carry and maintain, at its own expense, including any City-approved deductibles or retentions, Cyber Liability insurance in an amount stated herein. The Cyber Liability policy must include security and privacy liability, media liability, business interruption and extra expense, and cyber extortion liability, as specified by the City. Such coverage is required if Consultant provides products and/or services related to information technology and electronic data processing (including hardware and software) to the City or as otherwise required by the City.
- g. Minimum Policy Limits Required.
- (i) The following insurance limits are required for the Agreement:

Combined Single Limit

Commercial General Liability	\$2,000,000 per occurrence/\$4,000,000 aggregate for bodily injury (including death), personal injury and property damage
Automobile Liability	\$1,000,000 per occurrence for bodily injury (including death) and property damage
Employer's Liability	\$1,000,000 per accident for bodily injury or disease
Professional Liability / ELL	\$1,000,000 per claim and aggregate (errors and omissions)
Pollution/Asbestos Liability	\$1,000,000 per occurrence or claim/\$2,000,000 aggregate (if Project involves environmental hazards)
Cyber Liability Insurance	\$1,000,000 per occurrence/\$2,000,000 aggregate (if Project involves electronic data processing or development of hardware or software)

If Consultant maintains higher limits than the minimums shown above, the City requires and shall be entitled to coverage for the higher limits maintained by Consultant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.

h. Evidence Required.

- (i) Prior to execution of the Agreement, the Consultant shall file with the City evidence of insurance from an insurer or insurers certifying to the coverage of all insurance required herein. Such evidence shall include original copies of the ISO CG 2010 (or insurer's equivalent) signed by the insurer's representative, Certificate of Insurance (most recent version of Acord 25 Form or equivalent), and Additional Insured Endorsement verifying compliance with the requirements. All evidence of insurance shall be signed by a properly authorized officer, agent or qualified representative of the insurer and shall certify the names of the insured, any additional primary insureds, where appropriate, the type and amount of the insurance, the location and operations to which the insurance applies, and the expiration date of such insurance.

i. Policy Provisions Required.

- (i) The City of Santee, its City Council and each member thereof, its officers, employees, and agents shall be named as an additional insured on the Commercial General Liability policy, and, if the Project involves environmental hazards, on the Pollution/Asbestos Liability policy using form 2010 1185 or equivalent. Any subconsultant, subcontractor or similar entity performing work on the Project must add the City as an additional insured using CG form 20 38, or broader coverage. Blanket endorsements may be accepted at City's discretion. All policies shall contain or shall be endorsed to contain a provision that advanced written notice of any cancellation, including cancellation for non-payment of premium, shall be provided to the City. Statements that the carrier "will endeavor" and "that failure to mail such notice shall impose no obligation and liability upon the company, its agents or representatives," will not be acceptable on endorsements. At the City's sole discretion, the requirement to endorse policies to provide advanced written notice of cancellation to the City

may be waived upon the Contractor's agreement that it shall provide the City with copies of any notices of cancellation immediately upon receipt.

- (ii) General Liability, Automobile Liability, and if required, Pollution Liability insurance policies shall contain a provision stating that the Consultant's policies are primary insurance and that the insurance of the City or any named additional insureds shall not be called upon to contribute to any loss.

j. Qualifying Insurers.

- (i) All policies required shall be issued by acceptable insurance companies, as determined by the City, which satisfy the following minimum requirements:

Insurance carriers shall be qualified to do business in California and maintain an agent for process within the State. Such insurance carrier shall have not less than an 'A' policyholder's rating and a financial rating of not less than "Class VII" according to the latest Best Key Rating Guide. Due to market fluctuations in the Workers Compensation sector, the City reserves the right and at its sole discretion to review and accept the Consultant's proposed Workers compensation insurance.

k. Additional Insurance Provisions

- (i) The foregoing requirements as to the types and limits of insurance coverage to be maintained by Consultant, and any approval of said insurance by the City, is not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by the Consultant pursuant to this Agreement, including but not limited to, the provisions concerning indemnification.
- (ii) If at any time during the life of the Agreement, the Consultant fails to maintain in full force any insurance required by the Agreement documents the City may terminate the Agreement or may elect to withhold compensation in an amount sufficient to purchase insurance to replace any expired or insufficient coverage.
- (iii) The Consultant shall include all subconsultants as insureds under its policies or shall furnish separate certificates and endorsements for each subconsultant. All coverage for subconsultants shall be subject to all of the requirements stated herein.
- (iv) The City may require the Consultant to provide complete copies of all insurance policies in effect for the duration of the Project.
- (v) Neither the City, nor its City Council, nor any member of thereof, nor any of the directors, officers, employees, agents or volunteers shall be personally responsible for any liability arising under or by virtue of the Contract.

16. Indemnification

To the fullest extent permitted by law, Consultant agrees to indemnify, defend (with independent counsel approved by the City) and hold harmless the City and its officers, employees and elected and appointed officials, and volunteers (each, an "Indemnified Party") from and against any and all liabilities (including without limitation all claims, losses, damages, penalties, fines, and judgments, associated investigation and administrative expenses, and defense costs, including but not limited to reasonable attorneys' fees, court costs and costs of alternative dispute resolution) regardless of nature or type, expressly including but not limited to those arising from bodily injury (including death) or property damage, arising out of or resulting from any act or omission to act of the Consultant, Consultant's agents, officers,

employees, subconsultants, or independent consultants hired by Consultant under this Agreement. The Consultant's obligations apply regardless of whether or not a liability is caused or contributed to by the negligence (including passive negligence) or other act or omission of an Indemnified Party. The acceptance or approval of the Consultant's work by an Indemnified Party shall not relieve or reduce the Consultant's indemnification obligation. Consultant shall pay and satisfy any judgment, award or decree that may be rendered against the City, its officials, officers, agents, employees or representatives. The provisions of this Section shall survive completion of the work under this Agreement or the termination of this Agreement and are not limited by the provisions relating to insurance.

If Consultant's obligation to defend, indemnify, and/or hold harmless arises out of Consultant's performance as a "design professional" (as that term is defined under Civil Code section 2782.8), then, and only to the extent required by Civil Code section 2782.8, which is fully incorporated herein, Consultant's indemnification obligation shall be limited to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant, and, upon Consultant obtaining a final adjudication by a court of competent jurisdiction, Consultant's liability for such claim, including the cost to defend, shall not exceed the Consultant's proportionate percentage of fault.

17. Confidentiality

Contractor shall keep confidential all information, in whatever form, produced, prepared, observed or received by Contractor to the extent that such information is confidential by law or otherwise required by this Agreement.

18. Laws, Venue, and Attorneys' Fees

This Agreement shall be interpreted in accordance with the laws of the State of California. If any action is brought to interpret or enforce any term of this Agreement, the action shall be brought in a state or federal court situated in the County of San Diego, State of California. In the event of any such litigation between the parties, the prevailing party shall be entitled to recover all reasonable costs incurred, including reasonable attorney's fees, as determined by the court.

19. Termination or Abandonment

- a. City may terminate this Agreement, with or without cause, at any time by giving thirty (30) days written notice of termination to Consultant. In the event such notice is given, Consultant shall cease immediately all work in progress.
- b. Consultant may terminate this Agreement at any time upon thirty (30) days written notice of termination to City.
3. If either Consultant or City fails to perform any material obligation under this Agreement, then, in addition to any other remedies, City or Consultant may terminate this Agreement immediately upon written notice.
4. Upon termination of this Agreement, all property belonging to City which is in Consultant's possession shall be returned to City. Consultant shall furnish City with a final invoice for work performed by Consultant. City shall have no obligation to pay Consultant for work performed after termination of this Agreement.

20. Organization

Consultant shall assign _____ as Project Manager. The Project Manager shall not be removed from the Project or reassigned without the prior written consent of the City. Consultant shall make every reasonable effort to maintain the stability and continuity of Consultant's staff assigned to perform the services required under this Agreement.

21. Notice

Any notice or instrument required to be given or delivered by this Agreement may be given or delivered by depositing the same in any United States Post Office, certified mail, return receipt requested, postage prepaid, addressed as shown below and shall be effective upon receipt thereof.

CITY:
Name:
Title:
City of Santee
10601 Magnolia Avenue
Santee, CA 92071-1222

CONSULTANT:
Attn:
Title
Company
Address
Address

22. Third Party Rights

Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than the City and the Consultant.

23. Severability and Waiver

The unenforceability, invalidity or illegality of any provision(s) of this Agreement shall not render the other provisions unenforceable, invalid or illegal. Waiver by any party of any portion of this Agreement shall not constitute a waiver of any other portion thereof.

24. Nondiscrimination

Consultant shall not discriminate, in any way, against any person on the basis of race, color, religious creed, national origin, ancestry, sex, age, physical handicap, medical condition or marital status in connection with or related to the performance of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

CITY OF SANTEE

CONSULTANT

By: _____
Marlene D. Best, City Manager

By: _____

APPROVED AS TO FORM:

BEST BEST & KRIEGER LLP

By: _____

EXHIBIT 'A'
SCOPE OF SERVICES

EXHIBIT 'B'
SCHEDULE OF CHARGES

EXHIBIT 'C'
ACTIVITY SCHEDULE